

United States District Court
Eastern District of California

Darrel L. Smith,

Plaintiff,

vs.

King, et al.,

Defendants.

No. Civ. S 04-0702 MCE PAN P

Order

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Plaintiff is a prisoner, without counsel, who claims his civil rights were violated by defendant King's deliberate indifference to plaintiff's safety by releasing confidential information about plaintiff's enemies. Plaintiff requests the court enter defendant King's default and award punitive damages upon the ground that defendant King has failed to comply with an order to answer any discovery request within 14 days.

A party may move for an order compelling discovery with respect to objections or other failure to respond to

1 interrogatories or requests to produce documents. Fed. R. Civ.
2 P. 37(a)(2)(B), 33(b)(5), 34(b). When a party disobeys an order
3 to provide or to permit discovery, the court may make such orders
4 as are just, including "rendering a judgment by default against
5 the disobedient party." Fed. R. Civ. P. 37(b). The court may
6 render judgement of default against a party who fails to serve
7 "answers or objections to interrogatories under Rule 33" or "a
8 written request for inspection submitted under Rule 34," provided
9 the interrogatories or request properly was served. Fed. R. Civ.
10 P. 37(d)(2), (3).

11 The court has made no order compelling discovery. Insofar
12 as plaintiff believes paragraph three of the December 10, 2004,
13 order governing discovery creates a right to responses within 14
14 days, it does not. The order requires defendant to give 14 days'
15 notice to plaintiff or any other prisoner before examining him at
16 deposition. Plaintiff does not allege he properly served
17 interrogatories or a request for inspection and in any event,
18 absent an order or a written agreement between the parties, a
19 party has 30 days to respond to requests made pursuant to Rules
20 33 and 34. Fed. R. Civ. P. 33(b)(2), 34(b).

21 Accordingly, plaintiff's January 18, 2005, motion is denied.

22 So ordered.

23 Dated: August 17, 2005.

24 /s/ Peter A. Nowinski

25 PETER A. NOWINSKI
26 Magistrate Judge

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